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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996)

CC Docket No. 94-129

Primus Telecommunications Group, Inc.
Petition for Waiver)

ORDER

Adopted: August 5, 1999

Released: August 5, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules² applicable to carriers changing a consumer's preferred carrier. In this order, we grant Primus Telecommunications Group (Primus) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable Primus to become the preferred carrier of those consumers currently presubscribed to Telegroup, Inc. (Telegroup).

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), reconsideration denied, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

² 47 C.F.R. §§ 64.1100 - 64.1190.

toll service except in accordance with such procedures as the Commission shall prescribe."³ The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁴ In the recently issued *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of subscribers.⁵

3. Primus requests a waiver of our verification rules to allow it to transfer subscribers presubscribed to Telegroup to Primus' customer base without first obtaining each subscriber's authorization and verification.⁶ Telegroup recently filed for bankruptcy and sold its assets and business to Primus. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Primus' Waiver Petition subject to the conditions represented in its filing.

II. DISCUSSION

4. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁷ We find that Primus has made a showing of good cause to grant a waiver of the requirements in the Commission's carrier change rules and orders to the extent necessary to allow Primus to transfer Telegroup's customers to Primus without first obtaining each customer's specific authorization and verification.

³ 47 U.S.C. § 258.

⁴ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁵ Pursuant to these procedures, carriers must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁶ On June 25, 1999, Primus filed a Petition for Waiver of Sections 64.1100-64.1190 of the Federal Communications Commission's Rules and Request for Expedited Treatment (Waiver Petition). On July 23, 1999, Primus filed a letter to Magalie Roman Salas, Federal Communications Commission, from Catherine Wang, Counsel for Primus, clarifying Primus' petition (Clarification Letter). On August 4, 1999, Primus filed a letter to Anita Cheng, Federal Communications Commission, from Catherine Wang, Counsel for Primus (Further Clarification Letter).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Primus has demonstrated that special circumstances exist that would warrant a waiver. Primus explains that, on February 10, 1999, Telegroup filed for Chapter 11 protection. The Bankruptcy Court approved the sale of all of the assets of Telegroup and most of its subsidiaries to Primus.⁸ According to the terms of the Asset Purchase Agreement (Purchase Agreement), Primus will acquire substantially all of the assets of Telegroup, including the customer accounts of Telegroup.⁹ Primus will adopt the terms and conditions of Telegroup's tariff so as to ensure that no rates, terms, or conditions will change as a result of the transaction, and will provide service to Telegroup's customers under the Telegroup name.¹⁰ Primus and Telegroup have already sent notice to each affected customer advising them of the change in ownership and that the rates will remain the same. The notice also provides a toll-free number and e-mail address to handle questions about the transaction. Upon the transfer of customers to Primus, additional notice will be sent to customers advising them of the change in underlying carrier. As a condition of this waiver, Primus has committed that it will send notice to Telegroup's customers that they are free to choose another carrier.¹¹ Additionally, with respect to any customers that are assessed a PIC change charge as a result of the transaction, Primus will send notice that it will reimburse customers for such charge.

5. We also conclude that Primus has shown that granting this request is in the public interest. Without this waiver, Telegroup customers are at risk of either losing their long distance service or of being charged substantially higher rates than those they received from Telegroup. Furthermore, as described above, Primus and Telegroup have implemented a notification plan for Telegroup's customers. We conclude that these conditions will adequately protect the rights of Telegroup's customers.

III. CONCLUSION AND ORDERING CLAUSES

6. For the foregoing reasons, we grant Primus Telecommunications Group, Inc. a limited

⁸ The subsidiaries excluded from the sale include PCS Telecom, Inc. (USA), Telegroup Financial Services Pty Ltd. (Australia), Telegroup International Management Pty Ltd. (Australia), Telegroup Network Services Pty Ltd. (Australia), RediCall Pty Ltd. (Australia), Newsnet ITN Ltd. (Australia), Switch Communications Pty Ltd. (Australia), Switch Operations Pty Ltd. (Australia), Newsnet Pty Ltd. (Australia), Newsnet Telecommunications Pty Ltd. (Australia), Newsnet Equity Pty Ltd. (Australia), Newsnet Message Services Pty Ltd. (Australia), Newsnet International Pty Ltd. (Australia), Talemax Pty Ltd. (Australia), Management Technology Co. Pty Ltd. (Australia), Newsnet Investment Pty Ltd. (Australia), Newsnet Ltd. (United Kingdom), Newfax NV (Netherlands Antilles), Netfax BV (Netherlands), Global Messaging Pty, Faxscape Pty Ltd., Gumtrain Pty Ltd., Deakin Networks Pty Ltd., (Australia), Telegroup Technologies Ltd. (New Zealand), Telegroup Network Services New Zealand Ltd. (New Zealand), Faxline Communications Pty Ltd. (South Africa), and Netnews SDN BHD (Malaysia).

⁹ See Waiver Petition at 3-4; Clarification Letter at 1.

¹⁰ Primus acquired the right to use the name "Telegroup" and associated trademarks. See Clarification Letter at 2.

¹¹ See Further Clarification Letter at 2.

waiver of the authorization and verification requirements of the Commission's rules to the extent necessary to allow Primus Telecommunications Group, Inc. to transfer the customers of Telegroup, Inc. to Primus Telecommunications Group, Inc. without first obtaining each subscriber's specific authorization and verification. The grant of this waiver is conditioned upon the provision of customer notifications, provision of service to Telegroup, Inc.'s customers at the same or better rates than those of Telegroup, Inc., and handling of any charges that are assessed to customers as a result of the transfer, as described above and further detailed in Primus Telecommunications Group, Inc.'s filings on June 25, 1999, July 23, 1999, and August 4, 1999.

7. Accordingly, pursuant to authority contained in Sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Primus Telecommunications Group, Inc. on June 25, 1999 IS GRANTED to the extent, and pursuant to the conditions, indicated herein.

8. IT IS FURTHER ORDERED that this Order is effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Robert C. Atkinson", is written over a horizontal line.

Robert C. Atkinson
Deputy Chief, Common Carrier Bureau